

Application No.: 09/996,707

REMARKS

The Office Action of December 12, 2003 has been carefully considered. Reconsideration of this application, as amended, is respectfully requested.

As is noted at the first page of the present application, the instant invention is directed to improving the operability and performance of produce-handling equipment. More specifically, the invention is specifically directed to equipment that may be difficult to clean and which normally provide characteristics that promote the growth of bacteria and fungi. The present invention seeks to reduce and eliminate such characteristics.

Claims 1 and 15 have been amended to recite a stationary produce contacting surface. Claims 3 – 5 have been amended to recite a "closed-cell" foam so as to be consistent with the claims from which they depend. Claims 20 and 21 have been amended to place claim 20 into dependent form, dependent from claim 1, and to recite a produce handling apparatus in place of food handling apparatus. Support for this amendment is found not only in the original claims themselves, but also at page 10 of the specification and Figure 10. It is respectfully noted that claims 20 and 21 have been amended without prejudice or disclaimer to the subject matter contained therein.

Turning now, to the office action, claim 20 was rejected under 35 USC §102(a) as being anticipated by Peviani (5,727,677) ("Peviani"). Claims 15 – 21 were rejected under 35 USC §103(a) as being unpatentable over Ross et al. (3,651,922) ("Ross") in view of Zabron et al. (5,906,269) ("Zabron"). Claims 1 and 6 – 14 were rejected

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under 35 USC §103(a) as being unpatentable over Moore (2,195,371) ("Moore") in view of Ross and Zabron. Claims 2 – 5 were rejected under 35 USC §103(a) as being unpatentable over the prior art applied to claim 1 (Moore in view of Ross and Zabron) and further in view of Newhall et al. (2,534,205) ("Newhall").

Turning, first, to the rejection under 35 USC §102(a), claim 20 was rejected as being anticipated by Peviani. Applicant respectfully notes that claim 20 has been amended to place it in dependent form, depending from claim 1, and thereby adding the limitations of a "removable produce handling apparatus associated with the produce handling machine" wherein the stationary member supports produce thereon and has a covering for at least one surface that is formed with an anti-microbial agent. As will be appreciated, the limitations of claim 1, from which claim 20 now depends, are not taught by Peviani. Furthermore, the limitations of a stationary member in a removable produce handling apparatus is neither taught nor suggested by Peviani or any of the other patents presently made of record. Accordingly, amended dependent claim 20, and claims dependent therefrom are respectfully asserted to be in condition for allowance having been amended to overcome the rejection based upon Peviani.

Turning now to the rejections under 35 USC §103(a), the disclosures of the cited art and the distinctions between the rejected claims may be briefly summarized as follows:

Claims 15 – 21 were rejected under 35 USC §103(a) as being unpatentable over Ross in view of Zabron. As noted by the Examiner, Ross is directed to a live roller conveyor for fruit, and does teach feed rollers 78 and a cushion 118. However, Ross

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does not teach or suggest that the rollers or the cushion utilize materials having an anti-microbial agent. Nor does Ross teach or suggest any concern for the growth or transfer of microbials on or via such surfaces.

Zabron is asserted as teaching "that it is well known to add an antimicrobial agent to a[n] article or material if it is intended to contact food grade products." (Office Action, p. 3, top) However, Applicant's reading of Zabron suggest that what is truly taught and suggested is "[i]f the belting is intended to be used to convey food grade products, an antimicrobial agent can be incorporated into the elastomeric material to inhibit bacterial growth. The textile yarns comprising the scrims and the fibrous layers can also have incorporated therein an antimicrobial agent." (col. 1, lines 26-31). Applicant respectfully contends that, at most, the teachings of Zabron would be applied only to the belting of Ross (e.g., infeed conveyor 122) as that is what was taught by Zabron. To apply the teachings of Zabron to materials other than the belting is to improperly expand the scope of what is specifically taught by Zabron without a basis for such expansion – keeping in mind that a hindsight reconstruction of the present invention is not an adequate basis to support such an expansion.

Although Applicant believes that claim 15 was distinguishable over the combination of Ross and Zabron (neither teaches or suggests the application of antimicrobials to "foam padding"), Applicant has nonetheless amended the claim to clarify that the foam padding covers a "stationary produce contacting surface." In light of the noted distinction, and the failure of either Ross or Zabron to teach or suggest the use of an antimicrobial agent on foam padding, let alone foam padding used on stationary

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surfaces, Applicant respectfully urges that claim 15 is patentably distinguishable over the combination of Ross in view of Zabron.

With respect to claims 16 – 19, these claims are dependent from claim 15 and are also believed to be in condition for allowance for the reasons set forth above relative to claim 15. With respect to claim 16, Applicant notes that Ross does not suggest what type of padding is to be employed on the stationary surface (118), nor is it suggested that the padding be a closed-cell foam with an antimicrobial agent. In fact, neither of the patents relied upon suggests the use of antimicrobial in a closed-cell foam padding. In claim 17 the padding is further characterized as having a continuous yet flexible outer layer. Again, Ross fails to specifically disclose or suggest such a limitation for padding 118. While the Examiner is correct in noting that Ross does teach a “thin, pliable wear sleeve 89 of plastic or other suitable wear resistant material” (col. 4, lines 55-56), there is no suggestion that it is a continuous outer layer, or that it is applied to the foam padding used on a stationary surface of the produce handling machine. To simply imply such is to expand the teaching of Ross in a manner that is not suggested or supported therein.

Similarly, the limitations of claim 18 (use of a vinyl outer layer with anti-microbial agent) and claim 19 (molding the padding to shape) are not taught or suggested by either Ross or Zabron. An unsupported assertion that vinyl with an antimicrobial agent is an obvious design choice is an improper basis for the rejection. If indeed the Examiner maintains that this limitation is obvious, then a reference clearly teaching such should be made of record. As for molding to shape not defining over Ross,

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perhaps the Examiner has failed to appreciate that by molding padding to shape it is possible to prevent the padding from being compressed as would be the case when non-shape-molded pieces are folded or bent to conform to the surfaces to which they are affixed. In light of the various distinctions and failures of Ross and/or Zabron to teach the elements of dependent claims 16 – 19, Applicant respectfully urges that the claims are patentably distinguishable over the combination and are in condition for allowance.

Relative to claims 20 and 21, which are incorporated in the rejection above, these claims now depend from claim 1. However, Applicant urges that the limitations of a removable produce handling apparatus having a stationary support member and a covering for a surface of that member that includes an anti-microbial agent (claim 20) or that the covering is foam padding (claim 21), is neither taught nor suggested by Ross, Zabron or a combination thereof. Accordingly, claims 20 and 21 are also believe to be patentably distinguishable over the combination of Ross and Zabron.

Claims 1 and 6 – 14 were rejected under 35 USC §103(a) as being unpatentable over Moore (2,195,371) ("Moore") in view of Ross and Zabron. Moore does teach an apparatus for receiving (hopper 15), washing (soaking tank, impeller tank, rinse tank) and drying (dryer unit) fruit and vegetables. However, Moore does not teach or suggest the use of padding to prevent bruising on any elements of the apparatus. Ross is therefore added to the combination as the basis by which it is asserted that it would have been obvious to add padding disclosed by Ross to the apparatus of Moore. However, the Examiner then states that "[i]t is also common in the food art to

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incorporate an antimicrobial agent into any number of food contacting surfaces, as is taught by Zabron." Applicant respectfully contends that this is a mischaracterization of Zabron and an exaggeration of what was known at the time of the present invention.

More specifically, Zabron, as noted previously, only teaches the use of antimicrobial agents in a conveyor belt or belting material that is in contact with food. Zabron does not teach or even suggest the use of an antimicrobial agent in other materials as it is entirely directed to the conveyor belting and its method of manufacture. Thus, while it may have been obvious to combine the teachings of Zabron with those of Moore and Ross, at most such a combination would result in the substitution of the belting material taught by Zabron for the conveyor belts taught by Moore and Ross. There is no teaching or suggestion in Zabron, or in Moore or Ross, that would lead one skilled in the art to apply foam padding having antimicrobial agents therein to the stationary surfaces of produce handling apparatus as is presently recited in independent claim 1. The assertion by the Examiner (apparently relying on the materials made of record by Applicant), of currently known yet unrelated products having antimicrobial properties, does not provide adequate basis for the proposed "obvious" modification of Zabron, Moore or Ross that has been asserted.

Moreover, as Applicant pointed out in the specification (e.g., p. 1, lines 15 – 27) the characteristics of produce-handling equipment are distinguishable from the examples the Examiner alleges. In view of these distinctions, and the limitations in the teachings of Moore and Ross in view of Zabron, Applicant respectfully maintains that

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no obvious basis for the modification of the Moore and Ross apparatus has been provided. Hence, claim 1 is urged to be patentably distinguishable over the combination of Moore in view of Ross and Zabron.

With respect to claims 6 – 14, these claims not only depend from presumably allowable claim 1, but also include further limitations that are not taught or suggested by the asserted combination of Moore, Ross and Zabron. Although the Examiner has apparently dismissed the claims as a "laundry list," a rejection based upon unsupported prior art teachings that "pretty much any surface which is intended to contact a food article" may have antimicrobial agents therein not only misses the point of Applicant's invention but dismisses, without adequate consideration, the claim limitations themselves. For example, the Examiner has failed to establish, where, in any of the patents and publications of record, there is a suggestion that the foam padding applied to a stationary surface has an outer vinyl layer (claim 7), let alone a vinyl layer having an antimicrobial agent (claim 8). Furthermore, no suggestion of inspection conveyor rolls (claim 9), a sizer drop surface (claim 10), a packing table (claim 11) having a layer of foam with anti-microbial properties is taught or suggested by Moore, Ross or Zabron. The drape of claim 12 and the scrubber rubber of claim 13 are not even taught or suggested in by Moore, Ross or Zabron, let alone the recited limitation that they include antimicrobial agents. In view of these noted failures of the prior art relied upon, or the distinctions noted thereover, Applicant respectfully submits that dependent claims 6 – 14 are patentably distinguishable and in condition for allowance. Acknowledgement of the allowability of these claims is earnestly requested.

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Claims 2 – 5 were rejected under 35 USC §103(a) as being unpatentable over the prior art applied to claim 1 (Moore in view of Ross and Zabron) and further in view of Newhall et al. (2,534,205) ("Newhall"). Applicant incorporates herein the previously noted distinctions between claim 1, from which claims 2 - 5 depend, and the combination of Moore in view of Ross and Zabron. Newhall is added to the combination for its teachings relative to the structure of a water absorber having open-cell foam rollers and associated wringer rollers. However, the Examiner has failed to establish where, if at all, the various combinations of patents, alone or in combination, teach the use of a water absorber with an open cell foam roller having anti-microbial properties. The simple substitution of Newhall's water absorber for the dryer of Moore does not result in any teaching or suggestion of rollers with the characteristics recited in claims 2 - 5. Accordingly, Applicant respectfully asserts that *prima facie* obviousness has not been established, and that claims 2 – 5 are, therefore, distinguishable over the alleged combination.

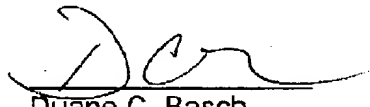
Insofar as claims 1 - 21 are concerned, these claims are all believed to be in allowable condition for the reasons hereinbefore discussed.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

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In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,



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